

## LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

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### for July 6, 2004 PLANNING COMMISSION MEETING

**PROJECT #:** Miscellaneous #05012  
Reasonable Accommodation

**PROPOSAL:** Request for a modification of the zoning requirement that group homes in the R-1 zoning district be separated by ½ mile.

**ADDRESS:** 4000 Lindsey Circle

**LEGAL DESCRIPTION:** Lot 40, Block 7, Arnold Heights Replat, located in the NW1/4 SEC 7 T10N R6E, Lancaster County, NE.

**EXISTING LAND USE AND ZONING:** Single-Family R-1 Residential

**ASSOCIATED APPLICATIONS:** Applicant has also requested a modification of building code requirements for this address. The procedure for his request does not include the Planning Commission.

#### **STAFF FINDINGS:**

1. Applicant's facility at 4000 Lindsey Circle currently serves 3 residents with developmental disabilities. Since there are no more than 3 residents, this facility meets the definition of "family" and may be located in any dwelling.
2. LMC §27.03.300 defines a group home as "a facility in which more than three but less than sixteen disabled persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care."
3. The addition of another developmentally disabled resident to this facility would make this a group home under the Zoning Ordinance.
4. LMC §27.11.030 requires group homes in the R-1 district to obtain a conditional use permit, which requires that "the distance between the proposed use and any existing group home measured from lot line to lot line is not less than one-half mile," or 2,640 feet.
5. An existing group home is located at 3800 NW 50<sup>th</sup> Street, approximately 1,560 feet from this property.
6. LMC Chapter 1.28.50 identifies the findings required to approve this request:

(1) Whether the housing which is the subject of the request will be used by an individual or a group of individuals considered disabled or handicapped under the Acts, and that the

accommodation requested is necessary to make specific housing available to the individual or group of individuals with a disability or handicap under the Acts.

(2) Whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit, or if alternative accommodations would be suitable based on the circumstances of this particular case.

(3) Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.

(4) If applicable, whether the requested reasonable accommodation would be consistent with the Comprehensive Plan land use designation of the property which is the subject of the reasonable accommodation request, and with the general purpose and intent of the zoning district in which the use is located.

7. The Lincoln Police Department has responded to 42 calls for service at 4000 Lindsey Circle from 2000-2003. They did not respond to any calls for service at 4000 Lindsey Circle in 2004 or 2005. The 42 calls for service range from assaults, mental investigations, assault on a police officer, disturbances, missing persons, larcenies, sodomy, vandalism, and obscene telephone calls.
8. Applicant's written request for reasonable accommodation is attached.

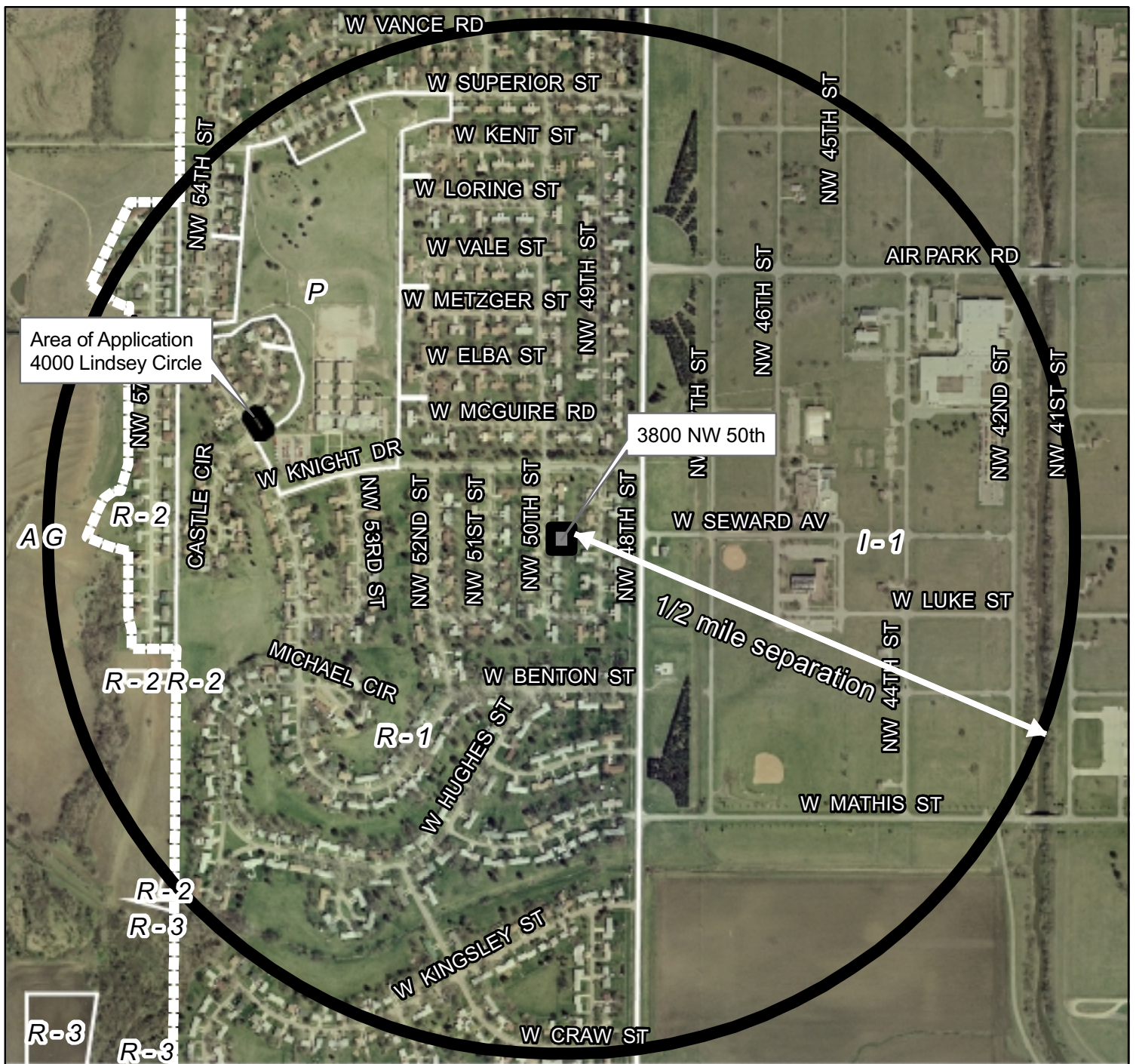
Prepared by

Greg Czaplewski, 441-7620, gczaplewski@lincoln.ne.us  
Planner

**Date:** June 23, 2005

**Applicant:** Developmental Services of Nebraska, Inc.  
2610 West "M" Court  
Lincoln, NE 68522  
435.2800

**Contact:** Scott Moore  
1500 Woodman Tower  
Omaha, NE 68102  
636.8268



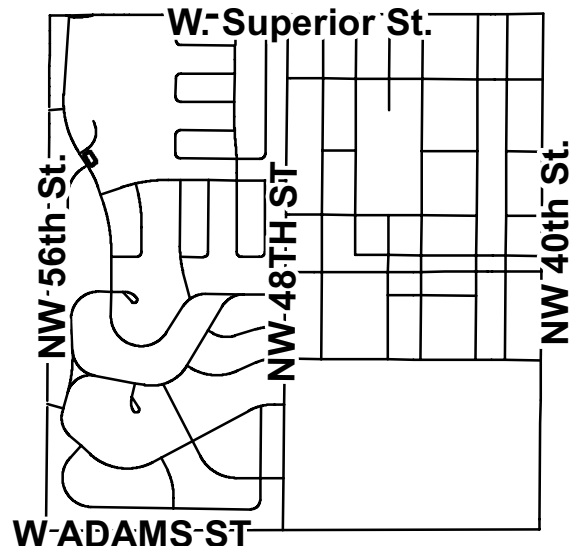
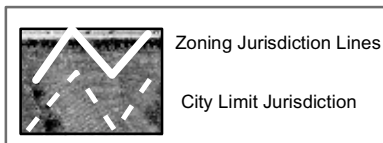
Miscellaneous #05012

2002 aerial

NW 54th St. & Lindsey Circle

- Zoning:**
- R-1 to R-8 Residential District
  - AG Agricultural District
  - AGR Agricultural Residential District
  - R-C Residential Conservation District
  - O-1 Office District
  - O-2 Suburban Office District
  - O-3 Office Park District
  - R-T Residential Transition District
  - B-1 Local Business District
  - B-2 Planned Neighborhood Business District
  - B-3 Commercial District
  - B-4 Lincoln Center Business District
  - B-5 Planned Regional Business District
  - H-1 Interstate Commercial District
  - H-2 Highway Business District
  - H-3 Highway Commercial District
  - H-4 General Commercial District
  - I-1 Industrial District
  - I-2 Industrial Park District
  - I-3 Employment Center District
  - P Public Use District

One Square Mile  
Sec. 7 T10N R6E



**Request for Reasonable Accommodation Pursuant to  
Lincoln Municipal Ordinance No. 18536**

**Applicant:** Developmental Services of Nebraska, Inc. ("DSN")

**Address:** 4000 Lindsey Circle

**Current Use:** Community based residential home for persons with developmental disabilities

**Basis:** DSN is providing community based residential housing for persons with developmental disabilities. The residents of the home are persons with disabilities under the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* ("FHA"), the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.* ("ADA"), and the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.* ("Section 504").

**Law:** DSN is requesting a reasonable accommodation from Code § 27.11.030(b)(2), which prohibits DSN from operating its home because there is another "group home" as that term is defined by the Lincoln Municipal Code within one-half mile measured from lot line to lot line.

**Reason:** DSN seeks to increase the number of persons with developmental disabilities it is currently serving at 4000 Lindsey Circle from 3 to 4. Section 27.11.030(b)(2) of the Lincoln Municipal Code currently prohibits DSN from operating a group home for four or more persons with developmental disabilities at 4000 Lindsey Circle. The requested accommodation is financially and therapeutically necessary. It will allow DSN to serve the increasing demand for community based residential treatment for persons with developmental disabilities. Community based residential treatment allows persons with developmental disabilities, mental illness and behavioral challenges to gain the skills, knowledge and experience to increasingly use and benefit from the resources and settings available to all citizens in our community. These persons are best served in a residential setting and the only way to provide this service is for such persons to live in a group home.

In DSN's absence, those currently in services would be placed in institutions or detention settings which are not able to address the underlying cause of their maladaptive behavior – their disabilities. Although often the individual's behavior improves in detention, maladaptive behavior quickly resurfaces after the individual has been placed back into the community. By providing the appropriate type of services and teaching adaptive skills in a community setting, DSN helps the person to develop appropriate social skills which

enable them to function in society and to lead a life as normalized as possible.

DSN's habilitative approach is the key to helping the individuals it serves change their expectations of themselves and others. No longer seeing themselves as failures, and their care givers as wardens, they begin to make appropriate, informed choices in their lives and learn to trust not only others, but also themselves.

There is no alternative reasonable accommodation that would provide an equivalent level of benefit of which DSN is aware.

DOCS/676987.1